**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928**

**WP(C).No. 7745 of 2007(V)**

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**PETITIONER:**

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**M/S.ARYABHANGI MOTORS, ALUVA, REP. BY ITS MANAGING PARTNER, JIBI THOMAS, S/O.DAVIS THOMAS AGED 36 YEARS, RESIDING AT GALELIO, PALARIVATTOM, ERNAKULAM.**

**BY ADV. SRI.GEORGE SEBASTIAN**

**RESPONDENTS:**

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1. **STATE OF KERALA, REP. BY THE SECRETARY, DEPARTMENT OF REVENUE, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE TAHSILDAR, ALUVA TALUK, TALUK OFFICE, ALUVA.**

**BY SR.GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

**EXT.P1:** COPY OF THE NOTICE DTD. 30/01/2007 ISSUED BY THE 2ND RESPONDENT.

**EXT.P2:** COPY OF THE DEMAND DTD. 30/01/2007 ISSUED BY THE 2ND RESPONDENT.

**EXT.P3:** COPY OF THE REPRESENTATION DTD. 20/02/07 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

/TRUE COPY/

KSS

**K.BALAKRISHNAN NAIR,J.**

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WP(C)NO.7745 OF 2007-V

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Judgment

The petitioner is aggrieved by the assessment of building tax for a work shop run by it. It claims exemption from payment of tax under Section 3(1)(b) of the Kerala Building Tax Act. But, the Tahsildar, by Ext.P1 order, assessed the petitioner to building tax to the tune of Rs.68,400/-. The petitioner submits, though it filed a representation, requesting the Tahsildar to forward the matter to the Government to consider its claim for exemption under Section 3(1)(b) of the Act, the same was discarded. Hence this Writ Petition, challenging the order of assessment made by the Tahsildar, Ext.P1 and also praying for a direction to the 2nd respondent to refer the matter to the Government.

2. I heard the learned Government Pleader appearing for the respondents also. The point raised by the petitioner is covered by several decisions of this Court. When a claim is made for exemption under Section 3(1)(b) of the Act, the assessing authority is bound to refer the matter to the Government unless the said claim is ex facie unsustainable. Going by the pleadings in this Writ Petition, the petitioner has made out a prima facie case for reference of the matter to the Government. Accordingly, the 2nd respondent is directed to forward the file leading to Ext.P1 to the Government within one month from the date of receipt of a copy of this Judgment. Upon receipt of the file, the 1st respondent shall consider the claim of the petitioner for exemption from payment of building tax after affording it an opportunity of being heard within three months from the

date of receipt of a copy of this Judgment. The recovery pursuant to Ext.P2 is kept in abeyance for a period of five months or till the 1st respondent passes final orders in the matter whichever is earlier.

The Writ Petition is disposed of as above.

08.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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